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## MEMORANDUM

TO: All District Court Judges, Clerk-Magistrates and Chief Probation Officers  
FROM: Chief Justice Zoll  
DATE: December 16, 1999  
SUBJECT: **Highlights of new District Court Rules for Probation Violation Proceedings**

### I. NEW PROVISIONS

The final version of the District Court Rules for Probation Violation Proceedings, as approved by the Supreme Judicial Court, contains several changes from the proposed draft last circulated to District Court judges. These changes are few in number and not fundamental in nature. However, they are significant.

#### 1. Commencement of proceedings

New provisions in Rule 3 allow the judge, as a matter of discretion, to terminate, at the outset, probation violation proceedings that are based on the issuance of a new criminal complaint against the probationer.

These provisions appear in Rule 3(b)(i) (second paragraph) and Rule 3 (c)(iii) (second paragraph), which address the same-court and different-court situations, respectively.

(Note that the Rule 3 retains the requirement that the probation department *must* commence violation proceedings (by issuance of a Notice of Violation and Hearing) in *every* case where that probationer has been charged with a new crime.)

The purpose of the new provisions is explained in the commentary to Rule 3 at "Judicial Discretion to Terminate Proceedings After Commencement."

#### 2. "Time limit" for hearing date

Rule 3 also has a revised provision describing the "time limit" for the hearing date. This provision states that, except in extraordinary circumstances, the hearing date may not be later

than 30 days after service of the Notice of Violation on the probationer (or 30 days after the probationer's first appearance in different-court or special-condition cases) if the probationer objects.

In other words, the court cannot schedule the hearing for a date more than 30 days later if the defendant objects, unless there are "extraordinary circumstances." If the defendant does *not* object, the hearing can be set for a date more than 30 days in the future. In any event, the goal is to schedule the hearing within 30 days, even if this means advancing the date that would otherwise be given for the associated criminal pretrial hearing. See Rule 3(b)(iii).

This revised provision appears in Rule 3(b)(iii) for same-court situations, Rule 3 (c)(iii) for different-court situations, and Rule 4(d) for special condition violations.

Note that the provision concerns the *scheduling of the hearing date*. The hearing itself subsequently may be continued to another date for good cause shown under Rule 5(e).

### **3. Court's decision on probation detention pending final hearing**

If a probation detention hearing has been held (as a precondition for holding a probationer in custody pending the final hearing) and probable cause for the violation is found, the court *may* order the probationer held. Rule 8(c) was revised by the addition of six specific factors to guide the court's decision on whether to hold the probationer in custody.

## **II. OTHER HIGHLIGHTS**

Other highlights of the rules (involving provisions unchanged from the final draft) include the following:

### **1. Specific procedures when a new crime is charged and defendant is on probation at a different court**

Regarding the "different-court" situation, Rule 3 sets forth important procedures for (1) service of the Notice of Probation Violation and Hearing at arraignment in the "new" court, including a date in that Notice for the defendant to appear at the "probation court," (2) sending the appropriate papers to the "probation court," and (3) action to initiate proceedings at the "probation court" when the probationer appears there. Rule 3(c).

### **2. The role of the District Attorney**

The District Attorney must be provided with a copy of every Notice of Probation Violation and Hearing that is issued. Rules 3(b)(i), 3(c)(iii) and 4(b). Also, the District Attorney may have significant involvement in these hearings, subject to certain limitations. Rule 5(f). I will be writing to the District Attorneys to apprise them of this provision of the rule.

### **3. No "tracking"**

The violation hearing may not be continued based solely on the fact that a new criminal charge that constitutes the alleged probation violation has not yet been resolved. Continuances may be granted, however, for good cause. Rule 5(e).

### **4. Hearsay evidence**

There is a two-pronged test to determine the legal sufficiency of hearsay evidence when that hearsay is the only evidence presented against the probationer. Rule 6.

### **5. Written findings and reasons**

The court must make written findings of fact to support the finding of a probation violation. Rule 7(c). If probation is revoked, written reasons must be stated for the revocation. Rule 7(d)(iv). (A form for both purposes will be provided.)

### **6. No "stay" of execution if probation revoked**

If the court finds a violation *and* orders a revocation (the latter being only one of several dispositional options), any suspended sentence must be executed and may not be "stayed". Nor may a new committed sentence (e.g., where the original disposition was straight probation) be "stayed." Rule 7(e). (One reason for this, among several, is that during such a "stay" the probationer would not be on probation, since probation was revoked. See Rule 7, commentary.)

### **7. Bail**

Bail is legally unavailable when probation detention is ordered following a preliminary probation violation hearing. Rule 8(d).